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978-0-521-07679-1 - Bills and Acts: Legislative procedure in Eighteenth-Century England

Sheila Lambert

Excerpt

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1

**ROBERT HARPER AND
PARLIAMENTARY AGENCY**

On Friday the 30th ult. died, Robert Harper, Esq., of Lincoln's Inn, Counsellor at law, who is deservedly supposed to have been one of the most able conveyancers in England for more than half this present century. He was deeply versed in the laws of his own country, and well acquainted with the language and history of the modern and ancient nations. His knowledge was great; but his humanity and good temper were above all the modes of expression. He was born at Farnley in this parish; educated at the Free-School in this town; and was the elder brother of Samuel Harper Esq., Alderman of this borough.¹

The eldest son of Samuel Harper of Farnley, Yorks, gentleman, Robert Harper was born just before the turn of the century and was admitted to Lincoln's Inn on 14 March 1717. On 5 February 1735 he was called to the bar and on 30 May 1746 to the Bench of Lincoln's Inn. Robert's brother Samuel was born about 1700. He did not attend university but despite the lack of any indentifiable legal training he assisted his brother in his London practice. In later life he returned to Leeds. From 1758 the local paper records property of his in the town to be let.² On 26 October 1762 he was chosen common councilman, and two weeks later alderman; the following year he was elected mayor – a rapid rise. His tenure of office seems to have been uneventful,³ and when he died on 13 February 1775 his obituary records merely that he had served the office and was in the 75th year of his age.⁴ He was buried at Farnley. Nothing is known of his descendants, if any.

Robert Harper had two sons, Robert born 16 February 1729 and Samuel born 28 December 1732.⁵ Robert junior entered

¹ *Leeds Intelligencer*, 10 November 1772, printed *Publications of the Thoresby Society*, xxxviii, 82.

² *Publications of the Thoresby Society*, xxviii, 107, 126, 167, 168, 220; xxxiii, 156, 169; xxxviii, 149. ³ *Ibid.*, xli, 294, 397–8. ⁴ *Ibid.*, xxix, 403.

⁵ *The Records of the Honorable Society of Lincoln's Inn* (London, 1896), ii, 453.

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Lincoln's Inn in 1745 and was called to the bar in 1754. In 1763 he married Ann Rhodes of Ripon and went to live in Yorkshire; by 1772 he was a widower with only one child, a daughter, Sarah;¹ he died in 1793.² Samuel was the only member of the family not to follow a career in the law. After attending school in Fulham he was admitted to Trinity College, Cambridge, in 1750, graduated in 1754, M.A. 1757, and being ordained in 1756 became curate of Gamston, Notts, and in 1775 Vicar of Rothwell, Leeds³ (very close to Farnley). But it seems likely that he was non-resident, for his career was made in the British Museum. The claim of his obituary in 1803 that he had been 'upwards of 47 years librarian to the British Museum and 37 years chaplain to the Foundling hospital'⁴ is exaggerated so far as the Museum is concerned but it seems probable that he was employed there in some capacity for the whole of his career after coming down from Trinity. In 1763 he was described as 'of the Parish of St. George's Bloomsbury'⁵ and his sons went to school in London between 1768 and 1772.

On 27 July 1765, Dr Thomas Percy enquired of Dr Thomas Birch: 'please to inform me by return of the post whether Mr Empson's place in the British Museum is yet filled up, and if not, whether Mr. Harper hath obtained a promise from any of the three electors, and whether any other candidate hath offered or is likely to succeed.'⁶ The place was that of one of the three under-librarians or 'keepers of departments' and the implication is that Harper was already working in the Museum. Dr Matthew Maty, publisher of the *Journal Brittanique* and editor of Chesterfield's works, was under-librarian of the Museum from its first institution in 1753 and principal librarian from 1772 to his death in 1776.⁷ In 1765 Maty became secretary of the Royal Society and in 1766 Samuel Harper became a

¹ 12 Geo. III pr. c. 86.² *Musgrave's Obituary*.³ J. & J. A. Venn, *Alumni Cantabrigiensis* (London, 1922).⁴ *Gentleman's Magazine* (1803), p. 697.⁵ 12 Geo. III pr. c. 86.⁶ John Nichols, *Illustrations of the Literary History of the Eighteenth Century* (London, 1817–58), vii, 577–8.⁷ John Nichols, *Literary Anecdotes of the Eighteenth Century* (London, 1812–15), iii, 257.

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Fellow of the Society.¹ Maty's son, Dr Paul Henry Maty was assistant librarian from 1778 to 1784 and of the catalogue of printed books, in two volumes folio, of 1787, it is said that 'about two-thirds were compiled by Dr Maty and Mr Harper and the remainder by Mr Ayscough'.² Harper also assisted in 1786 with the publication of the facsimile edition of the Alexandrine MS of the New Testament by Dr Woide.³ When Maty died in 1788 'His remains were attended by Mr Penneck, Mr Harper, Mr Planta, Mr Woide and Mr Southgate, his Associates in the Museum.'⁴ Shortly before his own death, Harper's considerable private library was sold; his late colleague Joseph Planta, then principal librarian, obtained a copy of the fifty-seven page catalogue,⁵ went to the sale and purchased several items on behalf of the Museum.

The Reverend Samuel Harper had two sons, again called, predictably, Samuel and Robert, who attended Westminster School.⁶ Samuel, born about 1761, was admitted to Lincoln's Inn in 1778 and became a Law Stationer; his *Practical Hints for abstracting title deeds* went through three editions between 1817 and 1829. Robert John, born in 1764, was admitted to Lincoln's Inn in 1781 and became keeper of the records and Deputy Clerk of the Council of the Duchy of Lancaster, in which capacity he 'kindly assisted' Richard Gough with his *History and Antiquities of Pleshy*.⁷ In 1816 Robert John sought, and was given, permission to restore at his own expense the tombstone of his grandfather, Robert, in Lincoln's Inn Chapel.⁸

To return to the latter: almost nothing is known of Robert Harper's life outside of the Inn where his children were baptised and he himself was buried. His chambers in the Inn, from December 1734, were on the ground floor of staircase 25 in Gatehouse Court.⁹ From the time of his call to the bench in

¹ The identification is queried by Venn, but *The Signatures in the First Journal-Book and the Charter Book of the Royal Society* (1912), leaves no doubt about it.

² Nichols, *Lit. Anec.*, ix, 55. ³ *Ibid.*, p. 10.

⁴ *Ibid.*, iii, 260. ⁵ BM 821. g. 16(1).

⁶ *The Record of Old Westminsters*, ed. G. F. Russell Barker (London, 1928).

⁷ Nichols, *Lit. Anec.*, vi, 302. There is a considerable amount of Harper's correspondence on Duchy business in the Liverpool papers (BM Add. MSS 38,446–51).

⁸ *The Records of the Honorable Society of Lincoln's Inn. The Black Books* (1899), iv, 142.

⁹ The Red Book, p. 328.

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1746 the Red Books show that Harper was diligent in his attendance at meetings of the Council, and from 1752 he served in turn the principal offices of the Inn, being Master of the Walks in 1752, Keeper of the Black Book in 1753, Dean of Chapel in 1755, Treasurer in 1760 and Master of the Library in 1761.¹ The following year he represented Lincoln's Inn on the committee which settled a joint admissions policy for the four Inns of Court and received the thanks of his fellows for his services.²

The volume of manuscripts at Lincoln's Inn which bears Harper's name consists for the most part of the indexes to his working papers, but it also indicates that Harper, like many of his generation, had some antiquarian interests. He possessed a seventeenth-century manuscript copy of Hooker's translation of the 'Modus tenendi parliamentum' and also of Hooker's own tract 'The Order and Usage how to keep a Parliament in England'.³ A client gave him a copy of 'Wise William Pierrepont's reasons against a public register'⁴ of about 1671, which was afterwards printed from manuscript in the *Harleian Miscellany*.⁵ Like Speaker Onslow, he subscribed for the 1732 edition of Whitelocke's *Memorials*. The nature of these items emphasises the parliamentary bias of Harper's interests.

Harper's practice must have been lucrative, but we have no information about his estate except that he owned some land in the City which he settled on his eldest son and which was worth £1,000 by 1772.⁶ It is sad to have to record that in the year of his death, when his son's marriage settlement needed revision, 'Robert Harper the Elder Esquire in the Bill named is so very far advanced in years and under so great an Imbecility of mind as to be incapable of signing the petition or of

¹ *The Black Books*, iii, 349, 353, 355, 357, 368, 369.

² *Ibid.*, 374–5. There is a tradition at Lincoln's Inn that Harper 'ghosted' *An Examination of the Scheme of Church Power, laid down in the Codex Juris Ecclesiae Anglicanae* (1735), ascribed to Sir Michael Foster. I can find no justification at all for this belief.

³ These manuscripts are rather rare. They occur together with a list of the parliament as in Yelverton MS vol. cxxii, now BM Add. MS 48,110, and in the printed edition of *The order and usage of the keeping of a Parliament*, published in 1575. The manuscripts may be copies of the printed book.

⁴ BM 357. c. 12(83). Copy attested by Samuel Shering, the Duke of Kingston's attorney. ⁵ 1745 ed., iii, 305–11. ⁶ 12 Geo. III pr. c. 86.

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testifying his consent'.¹ Perhaps this is the reason he died intestate. Letters of administration were granted the following year to his son, the Reverend Samuel of the British Museum. Even his tombstone cannot now be traced in spite of his grandson's attempt at restoration. But Robert Harper left his own memorial, till now unrecognised, and it is to his indexes that we must turn for the clue to his career.

The Reverend Samuel inherited his father's library and this was sold, with his own, in 1802. As a result the British Museum acquired an item described as 'Private Acts of Parliament of George I, II and III. 62 vols. bound; and a great number unbound'. This was part of the working library of Robert Harper's law office; but unfortunately the Museum did not obtain the manuscript indexes to it; these are in the volume of Harper MSS at Lincoln's Inn.² At the Museum, Harper's papers appear at first to have been catalogued in their original order, but later, in the absence of the indexes, their provenance was ignored, the volumes split up and their contents reclassified and dispersed. With the aid of the indexes I have been able to reconstruct the greater part of the collection and have ascertained that almost the whole of the Museum's set of so-called 'Private Acts'³ up to 1767 belonged to it. If it were not for Harper's collection, the Museum's holdings of eighteenth-century parliamentary papers would be thin indeed.

At the Museum there is only one, subsidiary, index, headed 'Orders, Petitions and proceedings in extraordinary and special cases'.⁴ Only three pages in length, the references in this index go up to volume 36 (1759) and cover a wide variety of papers including 'cases' and 'reasons' in connection with public acts. For instance a sequence taken at random reads:

	Vol.	No.
Mr Potters Bill for numbring the people	30	40
Case of Clerk Assistant in the House of Lords	30	42
Bill for a Method to bar Entails in Maryland	31	31
Mary Visscher's petition for a Denization	32	pa. 65
Security on the Duties of Ellenfoot Harbour	33	43

¹ HLRO. Judges report on *ibid.*² Presented to the Inn by Mr Hubert Stuart Moore, F.S.A., in 1915.³ State Paper Room, BS Ref. 2.⁴ Misbound following 357. b. 1(104).

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The most interesting item mentioned is Harper's own memorandum on passing private bills which originally formed part of his 'great precedent book' and which is discussed in chapter five.

The indexes at Lincoln's Inn are in two main sections. The first is an index to precedent books, covering twenty-seven volumes, three being called simply 'precedent books' 1, 2, and 3, the others being referred to by the letters C (seven volumes), M (seven volumes) and S (ten volumes), which one may guess mean Conveyances, Mortgages and Settlements respectively. These volumes are all lost except for part of volume 1 'the great precedent book' which has been split up and a few pages dispersed in different volumes at the Museum. From these survivals it can be seen that the volumes were entry books containing summaries of the documents in each case, written by various clerks at different times in hasty, cramped handwriting with many abbreviations – definitely volumes for use, not ornament. The index to them is elaborate, though roughly written, with many cross-references. A typical entry reads:

Annuity

Proviso to apportion it for a broken half year	1pb,691
Secured by a Mortgage & defeasance thereof	M7,350
Secured for 2 lives out of Exchequer Annuities	2pb,587

This index to the precedent books seems to have been made contemporaneously; the form of the second section of the index, on the other hand, shows that it was not compiled until the collection was almost complete. This is the index to Acts of Parliament, the main part of which, running to over 100 pages, covers forty-four volumes, most of which have been traced at the British Museum.¹ The contents of the first four volumes cover various dates in the first quarter of the century and begin to be in annual sequence from volume 5, 1 George II, suggesting that the earlier papers were put in order at that date. From 1728 the papers were kept in regular sessional order, a volume for each year usually beginning with the printed private bills of the session, followed by public bills and other parliamentary

¹ The indexes and the papers themselves are discussed in more detail in Appendix I.

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papers, and concluding with a manuscript section containing copies of the various supporting papers required for the passing of the private bills which Harper himself had drawn.

In addition to this main index of Acts, there are in Lincoln's Inn six subsidiary indexes (or rather lists in date or volume order) whose entries are duplicated in the main index and which must have been drawn out separately for convenience of reference. Three cover Estate Acts, Change of Name Acts and Divorce Acts. Another covers Inclosure Acts and this contains references to additional volumes A2, B and C which do not appear in any other index and which I have not been able to trace ('C' is evidently not the same as the 'C' for Conveyances volumes of precedents). The fifth subsidiary index also covers Inclosure Acts but from the point of view of form, not content, for instance: 'Articles recited pretty long'; 'Articles recited very short referring to ye Act'; 'Allotments made copyhold'. Another five page index, headed 'Kingston' itemises all the papers relating to the Duke of Kingston's property.

The compilation of such lengthy indexes near the end of a working life throughout which he had apparently managed without them suggests that Harper was preparing to hand over his practice to a successor, or perhaps it was simply due to a slightly senile pride in his achievement. One cannot suppose that any successor would need the final list at Lincoln's Inn, which was evidently made by running straight through forty-three of the forty-four volumes of 'Acts' in the numerical order in which Harper then had them in his possession. This list is headed 'Acts drawn by RH'¹ and extends to the amazing total of 613 items covering the years 3 George I to 6 George III. Beginning with one or two bills in each of the years 1717, 1718, 1720–2, the number then gradually increases until sixteen to twenty bills each session are common in the 1740s with no less than twenty-six in 1747; later there is some decline, but still ten in the last year, 1766. The evidence of this list is confirmed by the papers at the Museum: Harper put his

¹ Harper may be forgiven the misnomer. He was not accustomed to his bills failing to pass. 93% of the numbered items in his list did become acts and of the remainder some were never introduced and others succeeded at a second attempt.

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initials 'RH' in the top left-hand corner of the copy of each bill he drew personally, and the manuscript material in the volumes, which could have been known only to the lawyer concerned, refers only to bills so marked. Nor is the list complete. It was made up to the end of 1766 but in 1767 Harper drew seven more bills. There is also evidence, from the presence of manuscript petitions amongst the papers that Harper was responsible for at least two dozen more bills over the whole period which he overlooked when compiling his list.

Robert Harper was a conveyancer, which explains the lapse of eighteen years between his admission to the Inn and his call to the bar. Conveyancing was a separate branch of legal practice, its practitioners having more in common with barristers than with attorneys, but since they were allowed to be members of their Inn, could work from their chambers, and had no occasion to plead in court, there was no reason why they should be called to the bar and they usually did not take this step; they remained 'practitioners under the bar'.¹ In 1729 attorneys were required by act² to register if they were to continue in practice and Robert Harper was duly enrolled on 27 November 1730 before Mr Justice Denton at Serjeant's Inn as an attorney in the Court of Common Pleas.³ Perhaps he thought this a necessary precaution and did not intend to practise, or perhaps he thought the Inn would not proceed severely against an old established member who was really a conveyancer and only incidentally an attorney. It was not yet an absolute rule that practice as an attorney must cease for at least two years if one was to be called to the bar.⁴ Any way, Harper changed his course and in 1735 was called. We can only guess at his motives: perhaps the Leeds Free School boy had become the type of good college man who, having established himself in his profession, looked forward to service in the offices of his Inn and ultimately the Mastership as his greatest remaining ambition and the reward of his labours. Membership of the bar, though unusual for a conveyancer, did

¹ Holdsworth, vi, 448.² 2 Geo. II c. 23.³ *Additional Lists of Attornies and Solicitors* (1731), p. 68.⁴ Holdsworth, xii, 23. The rule was laid down by the committee of which Harper was a member, in 1762. Above, p. 4.

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not preclude his continuance in that practice, the chief difference being that he would usually be called upon to settle, rather than actually draw the clauses of, acts or other documents. Harper's call in fact seems to have made no difference at all to the nature of his activities.

In 1760 the Society of Gentlemen Practisers in the Courts of Law and Equity (the forerunner of the Law Society) was concerned to defend its rights against the invasions of members of the Scriveners Company. When the case came on before the Recorder of London on 11 December Harper gave evidence on behalf of the Society and being asked how long he had been in the profession replied 'Why, Sir, I may reckon it above forty years.' Counsel then asked 'You have more particularly had Conveyancing business brought before you. Pray how long have you followed that branch?' to which Harper replied 'Why I believe I may say ever since any body would trust me'.¹ Even so, and although it stands first in his list of 'Acts drawn' it is hard to believe that Harper was solely entrusted with his first private bill, and that the very valuable marriage settlement of the Marquis of Granby, at the age of 17. It seems more likely that he had entered chambers where he was able to assist with drawing the bill. There are some hints that these may have been the chambers of Peniston Lamb, uncle of Sir Matthew Lamb, M.P., who named his son, later the first Lord Melbourne, for his great-uncle, having inherited from him a fortune reputed to be £100,000.² In his will, which is very brief and businesslike, Peniston Lamb left almost his whole estate to his nephew. Apart from some small bequests and annuities to female relatives, the only monetary legacy is one of £20 to Samuel Harper, who was one of the witnesses of the will. Lamb left mourning rings to seven of 'my friends' including 'Mr Robert Harper'.³ Peniston Lamb was a conveyancer, who entered Lincoln's Inn in 1708, perhaps only for the sake of residence there, since he was already well established in his

¹ *The Records of the Society of Gentlemen Practisers in the Courts of Law and Equity*, ed. E. A. Freshfield (London, 1897), p. 274.

² G.E.C., *The Complete Peerage*, sub Melbourne.

³ P.C.C. Ducie 33. The will is dated 27 Jan. 1734/5. Lamb died on the 29th and was buried at Lincoln's Inn on 3 Feb. (*Records*, ii, 649).

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profession and was never called. He was a witness to the preliminary agreement for the Marquis of Granby's marriage settlement and a trustee under the act. Another of his clients was the Duke of Kingston, as shown by a letter he wrote in 1707 to the Duke's man of business concerning 'what Deeds we have in our custody' relating to Samuel Pierrepont's estate;¹ Harper notes items relating to the late Samuel Pierrepont's estate in his list of Kingston papers, which also shows that he had copies of many deeds and other instruments relating to the Kingston estates. The only letter of Robert Harper's so far discovered is in the same collection, addressed to Samuel Shering at Thoresby, concerning the surrender of a mortgage.²

If the Duke of Kingston was perhaps his most important client, Harper also drew all the Cowper family bills [Nos. 80, 106, 162, 186, 374]; he probably drew the 1735 petition of William Cowper and other creditors of the Hanaper for arrears of salary;³ and he had copies of the papers in the case of the clerk of the parliament's claim to appoint his own clerk assistant;⁴ so he may have been the family's man of business. Harper was quite often named as a trustee under acts [Nos. 13, 30, 52, 100, 110, 255, 286, 306, 311, 363, 425, 493, 518]; sometimes his brother Samuel was co-trustee [Nos. 286, 518]; and sometimes Samuel acted alone [Nos. 204, 309, 498]. Trustees were necessary if a strictly settled estate was to be relieved: the property was vested in trustees, freed from the restrictions of the settlement, for the use of the parties entitled to the property. Usually the property was to be sold by the trustees as quickly as possible, thus terminating the trust, when the cash or other property bought from the proceeds was again vested in the person concerned under the terms of the settlement. But occasionally the trust was a permanent one, to administer estates on behalf of a lunatic, for instance. It may be guessed that when Harper acted as a permanent trustee

¹ BM Egerton MS 3516 f. 76.² BM Egerton MS 3516 f. 100. Another hint is that in 1731 Peniston Lamb and Samuel Harper jointly certified a copy of an act from the Parliament Office, BM 3 Geo. I pr. c. 7.³ BM 357. c. 2(91).⁴ BM 357. d. 10(42)-(44).